



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

**Honorable C. E. Patterson
County Attorney
Brewster County
Alpine, Texas**

Dear Sir:

Opinion No. O-4650

**Re: Under Article 3106, Vernon's
Annotated Civil Statutes, can
the county executive committee
order a runoff for a primary
election in one voting precinct
only?**

**We have your telegram of recent date requesting the
opinion of this department on the above stated question, which
telegram reads as follows:**

**"Under Article 3106 RCS can county executive
committee order a run off for primary in one vot-
ing precinct only, where there is a necessity for
a run off only in said one voting precinct. In
other words there are no opponents for local can-
didates except in one voting box where there are
eight candidates. Please reply promptly before
committee meets again Monday, June 22nd."**

**Article 3106, Vernon's Annotated Civil Statutes, reads
as follows:**

**"The county executive committee shall decide
whether the nomination of county officers shall
be by majority or plurality vote, and, if by a
majority vote, the committee shall call as many
elections as may be necessary to make such nom-
ination, and in case the committee fails to so
decide, then the nomination of all such officers
shall be by a plurality of the votes cast at such
election."**

**Article 3102, Vernon's Annotated Civil Statutes, pro-
vides in part:**

" . . . Any political party may hold a second primary election on the fourth Saturday in August to nominate candidates for any county or precinct office, where a majority vote is required to make nomination; but at such second primary, only the two candidates who received the highest number of votes at the general primary for the same office shall have their names placed upon the official ballot. . . ."

In view of Article 3105 and Article 3106, supra, it is apparent that the county executive committee can decide whether the nomination of county and precinct officers shall be by majority or plurality vote. (See the following cases: Cliett v. Williams, 97 S. W. (2d) 272; Anderson v. Aldrich, 120 S. W. (2d) 605; Dunnagan v. Jones, 76 S. W. (2d) 219; Wagner v. Yates, 119 S. W. (2d) 175; Sartin v. Hudson, 143 S. W. (2d) 817.)

It is stated in Wagner v. Yates, supra, that:

"It is clear that where the executive committee, at the proper time and prior to the first primary, provides for the nomination of county and precinct officers by majority vote (Article 3106, R. S., 1925) no person can be declared to be the nominee of his party for a county or precinct office, unless that person receives a majority of the votes in the first primary."

After carefully considering Article 3106, supra, and the above mentioned cases, it is our opinion that the county executive committee is not authorized to provide for the nomination of some county and precinct officers in a county by majority vote and further provide for the nomination of other county and precinct officers of said county by a plurality vote. In answer to your question, as stated above, it is our opinion that the county executive committee must decide and determine whether or not the nomination of all county and precinct officers shall be by a majority or a plurality vote.

Under the facts stated, it is apparent that only one precinct has more than two candidates for precinct offices and if the county executive committee provides that nomination shall be by a majority vote, a second primary election will be necessary. However, as indicated by your telegram, there

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will be no necessity for a second primary, except in the precinct mentioned, which has eight candidates for a precinct office, although the county executive committee provides that nomination for all county and precinct officers shall be by a majority vote; however, in connection with the foregoing and with reference to a second primary election for state officers, etc., we direct your attention to our opinion No. 0-4040, and enclose a copy of the same.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

APPROVED JUN 18, 1942

ATTORNEY GENERAL OF TEXAS

George Sullivan
FIRST ASSISTANT
ATTORNEY GENERAL

By *Ardell Williams*
Ardell Williams
Assistant

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ENCLOSURE

